

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the Office Action dated March 9, 2006. After entry of this amendment, claims 1-23 will remain pending in this application. Reconsideration and allowance are respectfully requested in view of the remarks made below.

#### ***1. The Prior Art Rejections***

Claims 1-9 and 11-19 were rejected under Section 102(c) based on U.S. Patent 6,112,923 to Ma ("Ma"). The text of the rejection stated:

Ma discloses, in figs. 13-15, a container comprising a retention structure 250 and a rotational locking structure 244, and a plastic closure comprising a tamper evident band 218 having J-hook retention member 224 with a plurality of pleated retaining elements (see also column 5, lines 50-57). The retaining element comprises a leading edge 227 and a trailing edge 228. The trailing edge has an abutment surface being parallel to a radius of the closure (see fig.13).

Claims 10 and 20 were rejected under Section 103 based on Ma. This rejection was explained as follows:

Although Ma does not disclose the closure being made from high density polyethylene, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Ma closure form material as claimed, since it has been held to be within the general skill of a worker in the art to select a known material as a matter of obvious design choice. In re Leshin, 125 USPQ 416

Applicant respectfully but strenuously traverses these rejections, for the reasons stated below. In addition, Applicant respectfully submits that such rejections may not properly be applied to the newly presented independent claims 21-23.

Ma discloses several embodiments of a closure cap. According to the embodiments in Figures 1 to 12, a closure with a retaining element having a circumferentially continuous arcuate portion 30 is disclosed. The continuous arcuate portion 30 is provided with "pleats" 28 that are

pleated radially outwardly of the arcuate portions. In the circumferential direction there is no stop or interruption in this retaining part.

In Ma's second embodiment (see Figures 13 to 15) that was cited as the basis of the Section 102(e) rejection, rather than pleats, the retaining rim of the tamper evident band is provided by rigid, incompressible wedge or ramp elements 226 that form part of a ratchet mechanism (see column 5, line 7 to 10). The rejection states that Ma discloses (in Figures 13 to 15) a closure with a band having a J-hook retention member with a plurality of pleated retaining elements. Applicant strongly disagrees. The retaining elements shown in Figures 13 to 15 of Ma are rigid, incompressible flaps/wedges that do not fold as would a pleated retaining element. There are no pleats. This is clearly taught by Ma's specification (see col. 5, line 7 to 10), where it is stated that in this embodiment, wedges or ramp elements are used rather than including outward pleats. This constitutes a clear teaching away from the use of pleats in the embodiment of Figures 13-15 in Ma.

In the Office Action it was stated that column 5, lines 50-57 of Ma provide a teaching that "inwardly directed pleats could be provided in combination with ramp elements." The statement in the Office Action implies that pleated elements as disclosed by Ma or Kelly may include a leading edge and a trailing edge such as to form a ratchet surface. This position is wrong, however. Ramp elements as well as pleated elements (disclosed by Ma or Kelly) are arranged on an annular retaining rim (see for example column 3, line 15 and column 5, line 17 of Ma). Furthermore, between the ramp elements and between the pleats as disclosed by Ma, there are arcuate portions 30 (see for example column 3, line 17 of Ma). The retaining rim in Ma is thus continuous in the circumferential direction. Technically it would not be possible to arrange pleats having a trailing edge on a continuous annular retaining rim. For pleats that include a trailing edge the rim would need to be interrupted.

In particular, Ma discloses (column 3 lines 54-55) and explicitly teaches (column 3, line 55) radially outwardly projecting pleats, extending away from the container neck and thereby not being appropriate for engagement with a corresponding structure on the container neck. Accordingly, Ma's pleats can not in any way be construed as being "constructed and arranged to

engage the container so as to resist rotation with respect to the container, whereby separation of said tamper evident band from said body portion is better assured when the closure is unscrewed from the container," as Applicant's independent claims require. Pleats known from the state-of-the-art as exemplified by Kelly and Ma are symmetrical. They have inclined surfaces toward both screwing directions. Neither Kelly nor Ma discloses or suggests in any way that such ramp surfaces could be modified to form a blunt radial side or a trailing edge that is engageable with a container so as to resist rotation with respect to the container.

In Applicant's opinion, a "combination of pleats and ramp elements" as Ma mentions in column 5, line 55 can only be understood as an arrangement of pleats (the sole function of which is to prevent outward flexing) plus additional ramp elements (the purpose of which is to prevent unscrewing) on the annular retaining ring. These necessarily would be separate elements. The cited paragraph in Ma (column 5, lines 50-57) needs to be read as a whole. The annular retaining rim has two functions: on the one hand the rim provides a design that ensures easy breaking of connections and on the other hand it provides a surface area to retain the band beneath the locking rim on the neck. The latter function can be improved by adding pleats to the retaining rim, in other words on a combination of pleats and ramp elements, both arranged on the retaining rim. Ma does not teach pleats having "blunt sides." Ma only teaches that pleats have the ability to prevent outward flexing of the retaining rim. Ma does not teach that pleats may provide for easy breaking of connections.

US 2002/0066713 to Ma ("Ma '713") is a continuation-in-part of the Ma patent and sheds considerable light on the meaning of a "combination of pleats and ramp elements" mentioned in the original Ma patent at column 5, line 55 et seq. Figures 17-19 in Ma '713 shows a closure with a tamper evident band that includes a retaining rim with locking structure that is formed as pleats and ramp elements. The pleats 322 extend outwardly, as paragraph [0059] states. Accordingly, their sole purpose is to prevent outward flexing. They do not engage the container in any way. It is the ramp elements 326 only that form part of a ratchet mechanism (see par. [0060] of the reference) for engaging ratchet structure on the container.

Independent Claims 1, 11, 21, 22 and 23 of the present application are directed to a J-hook retention member that includes a plurality of pleated retaining elements, wherein at least one of the pleated retaining elements is further constructed and arranged to engage the container so as to resist rotation with respect to the container. Clearly, neither Ma reference discloses or suggests this.

Moreover, newly submitted independent claim 21 sets forth that at least one of the pleated retaining elements has at least one inwardly directed fold, at least one outwardly directed fold and a trailing edge that is constructed and arranged to engage the container so as to resist rotation with respect to the container. This is clearly novel and nonobvious over the prior art of record.

Claim 22 sets forth that each of the retaining elements has an upper portion including at least one inwardly directed pleat fold, which is not disclosed in either of the Ma references.

Newly presented independent claim 23 sets forth that a part of the pleated retaining elements is further constructed and arranged to engage the container so as to resist rotation with respect to the container. This concept is not disclosed or suggested in any of the references of record, including either of the Ma references.

For these reasons, independent Claims 1, 11 and 21-23 are clearly novel and nonobvious with respect to U.S. Patent 6,112,923 to Ma and the Ma '713 reference.

The dependent claims are respectfully submitted to be allowable for the reasons discussed above with regard to the independent claims from which they depend, and for the substantial additional limitations that are set forth therein. For example, dependent claim 6 specifies that the trailing edge has an abutment surface defined thereon that is substantially parallel to a radius of the closure. In other words, the trailing edge is flat so as to provide a superior ratcheting surface. A limitation to this effect is also included independent claim 16. Clearly, the subject matter is not disclosed or suggested in the prior art of record.

Applicant appreciates the fact that Examiner Ngo took time out of her busy schedule to discuss this application with the undersigned on June 28, 2006. In the interview, the undersigned in the Examiner discussed the disclosure that is contained in the Ma patent and its relevance or lack thereof with respect to the existing claims and the proposed claims that are attached to the Interview Summary Form. Although the Examiner was not persuaded by Applicant's comments during the interview, Applicant is hopeful that the arguments presented above will be fully considered and found persuasive by the Examiner.

## **2. Conclusion**

Applicant has made an earnest effort to place this application in condition for allowance. If Examiner Ngo feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

/JLK/

John L. Knoble  
Registration No. 32,387

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KNOBLE YOSHIDA & DUNLEAVY, LLC  
Eight Penn Center- Suite 1350  
1628 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
(215) 599-0600